



BILL RICHARDSON  
Governor

DIANE DENISH  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Hazardous Waste Bureau*

2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
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RON CURRY  
Secretary

February 2, 2010

**SUBJECT: NOTICES FOR PUBLIC COMMENT AND HEARING ON:**  
**1) THE PROPOSED HAZARDOUS WASTE FACILITY PERMIT;**  
**2) THE INTENT TO DENY THE PERMIT FOR THE**  
**OPEN BURN UNITS TA-16-388 AND TA-16-399; AND**  
**3) THE INTENT TO APPROVE CLOSURE PLANS FOR OPEN BURN**  
**UNITS TA-16-388 AND TA-16-399**  
**FOR LOS ALAMOS NATIONAL LABORATORY, EPA ID No. NM0890010515**

Dear Interested Person:

The New Mexico Environment Department (Department) is providing the attached Public Notice on public hearings, and the opportunity for the public to comment on, pending actions before the Department for Los Alamos National Laboratory (LANL, or the Facility). Specifically, the Department is proposing 1) to issue a Hazardous Waste Facility Permit for LANL; 2) to deny the permit for open burn units at Technical Area (TA) 16; and 3) approve closure plans for those open burn units. These proposed activities are more fully described in the attached notice.

The Public Notice provides information on how to submit public comment and the public hearing process. Public comment will be received through the end of the public hearing. The public hearing on these actions will begin **April 5, 2010 at 9:00 a.m. MDT** and continue as necessary through **April 16, 2010**. The public hearing will be held at the Santa Fe Community College located at 6401 S. Richards Ave., Santa Fe, NM 87508, in the Jemez Conference rooms.

Any person seeking additional information regarding this notice may contact:

Mr. John E. Kieling, Program Manager  
New Mexico Environment Department  
Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505

Email: [john.kieling@state.nm.us](mailto:john.kieling@state.nm.us)  
Telephone: (505) 476-6000  
Fax: (505) 476-6030

Sincerely,

A handwritten signature in black ink that reads "John E. Kieling".

John E. Kieling  
Program Manager  
Permits Management Program  
Hazardous Waste Bureau



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RON CURRY  
Secretary

**PUBLIC NOTICE No. 10- 01**

**NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS WASTE BUREAU  
SANTA FE, NEW MEXICO  
February 2, 2010**

**NOTICES FOR PUBLIC COMMENT AND HEARING ON:**

- 1) THE PROPOSED HAZARDOUS WASTE FACILITY PERMIT;**
- 2) THE INTENT TO DENY THE PERMIT FOR THE OPEN BURN UNITS TA-16-388 AND TA-16-399; AND**
- 3) THE INTENT TO APPROVE CLOSURE PLANS FOR OPEN BURN UNITS TA-16-388 AND TA-16-399**

**LOS ALAMOS NATIONAL LABORATORY  
EPA ID No. NM0890010515**

The New Mexico Environment Department (Department) is providing this public notice on public hearings, and the opportunity for the public to comment on, pending actions before the Department for Los Alamos National Laboratory (LANL, or the Facility). Specifically, the Department is proposing 1) to issue a Hazardous Waste Facility Permit for LANL; 2) to deny the permit for open burn units at Technical Area (TA) 16; and 3) approve closure plans for those open burn units, as more fully described below.

LANL is a research laboratory owned by the U.S. Department of Energy (DOE) and operated jointly by the DOE and Los Alamos National Security, LLC (LANS). The Facility began operations in 1943 when the United States Army Manhattan Engineer District was established for the research and development of the atomic bomb. Today, the principal mission of LANL includes the research, design, development, and analysis of weapons components for the nation's nuclear arsenal, as well as research and testing in the fields of physics, hydrodynamics, explosives, chemistry, radiochemistry, metallurgy, biology, medicine, and environmental science.

The Facility generates wastes that are regulated under the federal Resource Conservation and Recovery Act (RCRA), the New Mexico Hazardous Waste Act (Chapter 74, Article 4 NMSA 1978, or the HWA), and the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC or HWMR).

LANL is located in Los Alamos County approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe and occupies approximate 40 square miles. LANL is at the following mailing addresses: DOE/NNSA, Los Alamos Site Office, 3747 West Jemez Road, Bldg 1410, Los Alamos, NM 87544; and LANL/LANS, PO Box 1663, MS K491, Los Alamos, NM 87545. The Facility's primary contact for these actions is: Ms. Lorrie Bonds Lopez, Outreach/Public Involvement, LANL, PO Box 1663, MS M996, Los Alamos, NM 87545.

## **I. NOTICE OF HEARING AND OPPORTUNITY TO COMMENT ON THE PROPOSED PERMIT**

DOE and LANS (the Applicants) have submitted to the Department an application for a permit to store and treat hazardous wastes at LANL under the HWA. The Department is proposing to approve a proposed Hazardous Waste Facility Permit (Proposed Permit) for LANL. The Department issued a draft Permit for public comment on August 27, 2007. The public comment period was extended through February 1, 2008. The Department in conjunction with the Applicants and other interested persons attempted to resolve the issues giving rise to the opposition on the draft Permit, as required by the HWMR. As a result of these discussions, the Department issued a revised draft permit for public comment on July 6, 2009. The comment period ended on September 4, 2009.

The Proposed Permit would allow the Applicants to accept, manage, store and treat hazardous waste at 24 permitted hazardous waste management units at LANL before the waste is transferred to off-site treatment or disposal facilities. The Proposed Permit would also require the Applicants to: 1) manage hazardous waste in accordance with permit conditions and limitations to protect human health and the environment; 2) complete the closure of permitted hazardous waste management units; and 3) conduct corrective action activities not covered by the March 1, 2005 Compliance Order on Consent.

Through this notice the Department announces a public hearing to accept additional public comment and provide persons a reasonable opportunity to present data, views, and arguments, as well as to examine witnesses on the Proposed Permit prior to issuance of a final permit. See *IV. Public Hearing*, below, which addresses the public hearing and submission of public comment on this action.

## **II. NOTICE OF HEARING AND OPPORTUNITY TO COMMENT ON THE INTENT TO DENY THE PERMIT FOR THE OPEN BURN UNITS TA-16-388 AND TA-16-399**

The Department is proposing to deny the permit for LANL's TA 16 Open Burn units (TA-16-399 and TA-16-388). The denial is based, among other things, on uncertainty in the conclusions of the ecological risk assessment.

The Department issues this public notice to announce the public comment period on the Intent to Deny the Permit for Technical Area 16 Open Burn units (TA-16-399 and TA-16-388). The Department is also announcing the public hearing on this matter to accept additional public comment and provide persons a reasonable opportunity to present data, views, and arguments, as well as to examine witnesses on this action. The public comment period will extend through the close of the public hearing pursuant to the New Mexico Hazardous Waste Regulations, 20.4.1.901.A(6) NMAC. See *IV. Public Hearing*, below, which addresses the public hearing and submission of public comment on this action.

The Department also announces the availability of a Fact Sheet providing the basis for the Department's proposed action. The Fact Sheet is available for review on the Department website at: <http://www.nmenv.state.nm.us/hwb/lanlperm.html>.

## **III. NOTICE OF HEARING AND OPPORTUNITY TO COMMENT ON THE INTENT TO APPROVE CLOSURE PLANS FOR OPEN BURN UNITS TA-16-388 AND TA-16-399**

The Department is also proposing to approve interim status Closure Plans for the Open Burn units TA-16-388 and TA-16-399 located at Technical Area 16 in the southwest part of LANL. The closure is pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 et seq. and New Mexico Hazardous Waste Management Regulations, 20.4.1.600 NMAC, incorporating 40 CFR Part 265, Subpart G. This public notice is pursuant to 20.4.1.600 NMAC, incorporating 40 CFR § 265.112(d)(4).

The Open Burn units are authorized to treat high explosive (HE) hazardous waste, under interim status pursuant to 20.4.1.600 NMAC. The Open Burn units were in existence prior to November 11, 1980, the effective date of the federal Resource Conservation and Recovery Act (RCRA) regulations. The Open Burn units were also included in the LANL permit renewal applications as units to be permitted. These units will not be included in Proposed Permit for LANL.

The Department issues this public notice to announce the commencement of the public comment period on the Closure Plans for the Open Burn units. The public comment period will extend through the close of the public hearing pursuant to the New Mexico Hazardous Waste Regulations, 20.4.1.901.A(6) NMAC. See *IV. Public Hearing*, below, which addresses the public hearing and submission of public comment on this action.

The Closure Plans are available for review on the Department's website at:  
<http://www.nmenv.state.nm.us/hwb/lanlperm.html>.

#### **IV. PUBLIC HEARING**

The public hearing on these actions will begin **April 5, 2010 at 9:00 a.m. MDT** and continue as necessary through **April 16, 2010**. The public hearing will be located at the Santa Fe Community College located at 6401 S. Richards Ave., Santa Fe, NM 87508, in the Jemez Conference rooms. The public hearing will provide interested persons a reasonable opportunity to present data, views, and arguments, as well as to examine witnesses. The hearing will afford an opportunity for all persons to present comment. The hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20.4.1.901.F NMAC, the Environment Department Permit Procedures, 20.1.4 NMAC, and any scheduling and procedural orders as may be entered by the Hearing Officer.

Any person, including the Applicants, wishing to submit written public comment or present oral public comment at the public hearing for Department's consideration, shall do so according to the procedures set forth below. The public comment period continues through the close of the public hearing.

##### **A. WRITTEN PUBLIC COMMENT**

The Department will accept written public comment on the actions provided above. Written comments shall be based on all reasonably available information and include, to the extent practicable, all referenced factual materials. Documents in the Administrative Record need not be re-submitted if expressly referenced by the commenter. Written comment must be filed with the Hearing Clerk on or before the close of the public hearing at the New Mexico Environment Department, Room N-2153, 1190 S. St. Francis Drive, PO Box 5469, Santa Fe, NM, 87502-5469. Written public comments may also be submitted at the public hearing.

##### **B. TECHNICAL TESTIMONY AND ORAL PUBLIC COMMENTS**

At the public hearing, the Department will accept technical testimony and non-technical oral comments. The Hearing Officer may set reasonable limits upon the time allowed for technical testimony and oral comments. Technical testimony and oral comments on these actions shall be accepted at the public hearing, in accordance with Department regulations, as set forth below:

1. **Technical Written Statements and Oral Testimony:** Any person who intends to provide a technical written statement or oral testimony concerning a Draft Permit, Application or Petition shall file a Statement of Intent to Present Technical Testimony on or before **March 5, 2010** with Hearing Clerk at the address provided above.

(a) **Content of Statement of Intent:** The Statement of Intent to Present Technical Testimony shall:

- (i) identify the person filing the statement;
- (ii) state whether the person filing the statement supports or opposes the Draft Permit, Application, or Petition, or in the case of the Division, the Division's recommended decision to approve, deny, or approve with conditions the Draft Permit, Application, or Petition;
- (iii) identify each witness, including name, address, affiliation(s), and educational and work background;
- (iv) estimate the length of the direct testimony of each witness;
- (v) identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
- (vi) list or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and
- (vii) attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

2. Effect of Failure to File: Failure to file a timely Statement of Intent to Present Technical Testimony meeting the requirements above, pursuant to 20.1.300.B NMAC, shall preclude a person from presenting technical testimony, and if the person has not filed a timely Entry of Appearance, pursuant to 20.4.1.300.A NMAC, from being a party in the proceeding, but shall not preclude a person from presenting a general written or oral statement or non-technical testimony in the proceeding.

3. General Written and Oral Statements; Non-Technical Testimony: Any person may provide a general written statement concerning these actions at or before the hearing. Any person may provide a general oral statement or non-technical testimony concerning these actions at the hearing.

### **PROCEDURE FOR ISSUANCE OF FINAL PERMIT DECISION**

The Department must ensure that the approved final permit, intent to deny, and closure plans are consistent with the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC). All written comments submitted on the proposed actions in this notice will be considered in formulating a final decision and may cause the proposed actions to be modified.

The Department will respond in writing to all public comments. The Department's response will specify which provisions, if any, of the actions have been changed in the final decision, the reasons for the change, and briefly describe and respond to all public comments on the proposed actions raised during the public comment period. All persons presenting written comments or who requested notification in writing will be notified of the Department's decision by mail. Responses will also be posted on the Department website.

After consideration of all the written public comments received, the Department will issue, modify and issue, or not issue a final permit or closure plans. If the Department modifies and issues the permit or closure plans, the Applicants shall be provided by mail a copy of the modified documents and a detailed written statement of reasons for the modifications.

The Department Secretary will make the final decision publicly available and will notify the Applicants by certified mail. The Secretary's decision shall constitute a final agency decision and may be appealed as provided by the Hazardous Waste Act, NMSA 1978 §§ 74-4-1 through 74-4-14.

### **ARRANGEMENTS FOR PERSONS WITH DISABILITIES**

Persons having a disability and requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the New Mexico Environment Department, Human Resources Bureau, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone number: (505) 827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

### **ADDITIONAL INFORMATION**

Any person seeking additional information regarding these actions, or who would like to arrange for review of the Proposed Permit, Fact Sheet, Closure Plans or the Administrative Record, may contact Mr. John Kieling at the Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, (505) 476-6000. A copy of the Proposed Permit, Fact Sheet, Closure Plans, the index to the Administrative Record, and this Public Notice are also available on the Department website at: [www.nmenv.state.nm.us/HWB/lanlperm.html](http://www.nmenv.state.nm.us/HWB/lanlperm.html). The Department will provide copies, or portions thereof, of the Administrative Record at a cost to the requestor.